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LEGAL INSTRUCTIONS CONCERNING APPLICATIONS FOR FULL INSURANCE BENEFITS - ASSIGNMENT OF MULTIFAMILY MORTGAGES TO THE SECRETARY

These instructions apply both to assignments of current mortgages under Section 221(g)(4) of the National Housing Act, 12 U.S.C. 1715l(g)(4) and to assignments of mortgages in default pursuant to 12 U.S.C. 1713(g). The time limitations and other requirements the mortgagee must meet in submitting a claim are set forth in 24 CFR § 207.258.

The initial package of legal documents should be sent to the attention of the Deputy Assistant General Counsel for Multifamily Mortgage Division. Subsequent documents should be sent to the attention of the staff attorney or paralegal handling the claim. All documents should be sent to the following address:

Multifamily Mortgage Division
Office of General Counsel
U. S. Department of Housing and Urban Development
451 7th Street, S. W. - Room 9230
Washington, D. C. 20410-0500

Part A - Documents to be Recorded

The mortgagee must file for record the following documents with the appropriate land records office:

1. Assignment of Mortgage. The assignment of mortgage must run to the "Secretary of Housing and Urban Development, of Washington, D. C., his/her successors and assigns" and must be in a form which meets the requirements of the laws of the jurisdiction in which the property is located. **NOTE:** Do not use Form No. 289, Assignment, as the assignment of mortgage. No insertions or deletions of any kind may be made to the requisite language below, except (i) modifications necessary to insert the missing information in the appropriate spaces and (ii) modifications or additions required in order to comply with applicable state law, local law, or recording requirements. Please ensure that the property description is attached to the assignment. The assignment must include the following requisite language:

This Assignment is without recourse or warranty, except that the undersigned hereby warrants that no act or omission of the undersigned has impaired the validity or priority of said Mortgage. The undersigned also

warrants that said Mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such Mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such Mortgage (except such liens or other matters as have been approved by the Assignee hereunder). The undersigned also warrants that, as of the execution of this Assignment, the sum of _____ and ____/100 Dollars (\$_____) (insert the unpaid principal balance of the mortgage as of the date of execution of the Assignment), together with the interest accruing at the rate of ____% per annum, as provided in the said Note and Mortgage, is actually due and owing under said Note and Mortgage, that there are no offsets or counterclaims thereto, and that the undersigned has a good right to assign the said Note and Mortgage.

2. Uniform Commercial Code ("UCC") Filings. The mortgagee must file a UCC financing statement assignment, assigning the UCC -1 to the Secretary, for each place at which the UCC-1 was filed (i.e., County Recorder's Office, Secretary of State, etc.). Additional filings may be necessary to comply with revised Article 9 of the UCC. See Part B, Item 8, below. Mortgagees must consult with their own counsel to ensure that their UCC submissions comply with Revised Article 9 of the UCC.

Part B - Submission of Legal Documents After Recordation of Assignment

The documents identified in this Part must be submitted within 45 days after the date that the assignment of mortgage is filed for record. The Office of the General Counsel may grant one 15-day extension of the deadline for claims paid in cash or debentures, upon written or oral request, made prior to the expiration of the 45-day period. If made orally, the request must be confirmed in writing, within five (5) calendar days after the 45-day deadline.

Please note, in the case of claims to be paid in cash, the mortgagee's failure to submit the documents within the deadline (or extended deadline) in a legally acceptable form, as determined by the Office of the General Counsel, shall result in the curtailment of interest on the claim, i.e., interest on the final insurance payment will accrue only through the last day of the deadline (or extended deadline). See 24 CFR § 207.259(b)(1)(iii).

Any extension granted or denied by the Office of the General Counsel is independent of extensions granted or denied by the Multifamily Financial Operations Division. Therefore, if necessary, the mortgagee must separately request and receive extensions from the Multifamily Financial Operations Division regarding the submission of fiscal documents.

The following documents must be submitted within the period specified above:

1. The original Note, endorsed to the Secretary with the following requisite language:

For value received, all right, title and interest of the undersigned to the within Note, the unpaid balance of which is \$_____ [insert the unpaid balance as of the date of assignment], together with interest thereon, is hereby assigned to the Secretary of Housing and Urban Development, his/her successors and assigns, without recourse or warranty except as shown in that certain assignment of even date assigning to said Secretary the mortgage securing this Note.

NOTE: If dated, the foregoing endorsement must bear the date of the execution of the assignment of the mortgage. If sufficient space is available, the endorsement must be typed on the back of the Note. The endorsement may be on an allonge only when sufficient space is not available on the Note.

If the original Note is unavailable, the mortgagee must submit an Affidavit of Lost Note, in a form acceptable to HUD, and an Indemnification Agreement. The Indemnification Agreement must contain the following language and be in a form acceptable to HUD:

[Insert name of the mortgagee] agrees to indemnify and hold harmless the Secretary of Housing and Urban Development and his/her successors and assigns against any loss, costs, or charges whatsoever, including attorney's fees, which may be sustained by the Secretary as a result of the loss of the original Note.

2. The original Mortgage or Deed of Trust, or a certified copy, and the originals or certified copies of all amendments and/or modifications. All certifications must be made by the recording official. If an amendment or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] agrees to indemnify and hold harmless the Secretary of Housing and Urban Development and his/her successors and assigns against any loss, costs, or charges whatsoever, including attorney's fees, which may be sustained by the Secretary as a result of the failure of the mortgagee to furnish an original copy of [insert description of document].

3. Original or copy certified by the recording official of the Assignment of Mortgage or Deed of Trust to the Secretary.

4. Original interim assignments, amendments, or modifications of the Mortgage or Deed of Trust, or certified copies. All certifications must be made by the recording official. If an assignment, amendment, or modification was not recorded and the original is unavailable, a copy

must be provided, along with an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

5. The original security agreement/chattel mortgage, or a certified copy. All certifications must be made by the recording official. If the security agreement/chattel mortgage was not recorded and the original document is unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

6. Assignment of Security Agreement. If a security agreement or chattel mortgage was recorded, the assignment of that document to the Secretary must also be filed for record. The assignment must include the following requisite language:

The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage].

7. Original interim assignments of the [Security Agreement][Chattel Mortgage], or certified copies. All certifications must be made by the recording official. If the interim assignments were not recorded and the original documents are unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement which contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

8. UCC Financing Statements. **NOTE:** Several states have unique UCC filing requirements. Mortgagees must consult with their own counsel to ensure that their UCC submissions comply with Revised Article 9 of the UCC. Mortgagees must provide evidence that the “Secretary of Housing and Urban Development of Washington, D. C., his/her successors and/or assigns as their interests may appear” holds a valid perfected first lien security interest in the collateral, either by assignment of existing UCC financing statements or by perfection/reperfection in both the applicable local jurisdiction for fixture filings and in the appropriate Secretary of State office.

- *If UCC Filings are Current:* The mortgagee must submit all original UCC filings (items (a) through (e) below, as applicable) showing recording information (or tear sheet/acknowledgement sheet for UCC filings that were originally on carbon set forms) (“UCC filings”) in chronological sequence, sorted by filing jurisdiction (i.e., clip or bind the UCC filings that were filed in a Secretary of State’s office separately from those filed in a city or county). If original UCC documents are unavailable, the mortgagee must submit copies certified by the recorder's office or copies accompanied by a UCC-11 Search. **Searches performed by title insurance companies or attorneys are not acceptable.** Lapsed UCC filings should be provided, to the extent available.

(a) UCC-1;

(b) UCC assignment for each interim assignment of a financing statement;

(c) UCC amendment(s), if applicable;

(d) UCC financing statement assignments, assigning each UCC-1 to the “Secretary of Housing and Urban Development of Washington, D. C., his/her successors and/or assigns as their interests may appear”; and

(e) UCC continuation statements.

- If UCC filings will expire within six (6) months after the assignment of mortgage, continuation statements must be prepared and filed for record by the mortgagee.
- *Lapsed UCC filings: Reperfecting the Security Interest in the Collateral:* If any UCC filing has lapsed, the mortgagee must prepare a new UCC-1 and file it for record in the appropriate filing office to re-perfect the security interest in the collateral. This must be accomplished within the deadline or extended deadline.

Reperfecting before the assignment of mortgage is recorded. The secured party named in the new UCC-1 should be the “[mortgagee name] and/or the Secretary of Housing and Urban Development, of Washington, D.C., their successors and/or assigns, as their interests may appear”.

If any UCC filing has lapsed, the mortgagee must submit an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of mortgagee] agrees to hold the Secretary of Housing and Urban Development and his/her successors and assigns harmless from any losses or damages caused by the lapse of the UCC filing or the failure to file a UCC financing statement.

- *UCC filing was never filed: Perfecting the Security Interest in the Collateral:* If a UCC filing was never made in a required jurisdiction, the mortgagee must prepare a new UCC-1 and file it for record in the appropriate filing office to perfect the security interest in the collateral, following the instructions set forth above under “Lapsed UCC Filings: Repperfecting the Security Interest in the Collateral” and pursuant to applicable law. This must be accomplished within the deadline or extended deadline, as applicable. The mortgagee must also submit an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of mortgagee] agrees to hold the Secretary of Housing and Urban Development and his/her successors and assigns harmless from any losses or damages caused by the lapse of the UCC filing or the failure to file a UCC financing statement.

NOTE: UCC-11 LIEN SEARCH WHEN THERE HAS BEEN A UCC LAPSE OR NON-FILING: Whenever there has been a UCC lapse or a UCC was not filed, the mortgagee must also provide a UCC-11 Search for each recording office as appropriate, pursuant to Revised Article 9 of the UCC, dated as of the date that the UCCs are assigned to the Secretary. The Search must demonstrate or evidence that the lien being assigned to the Secretary is a first lien,

and that there are no intervening liens. *If the lien being assigned to the Secretary is not a first lien, the prior lien must be removed, and the Secretary must be provided a first lien in accordance with these instructions.* **Searches performed by title insurance companies or attorneys are not acceptable.**

9. Form No. 289, Assignment. This form is intended to cover collateral documents, interests and funds required by HUD regulations to be assigned to the Secretary that affect the note or mortgage, or which may be necessary to enable the Secretary to enforce all rights of a mortgagee against the obligors. This instrument is not to be used as the assignment of mortgage and it need not be recorded.

10. The original of each hazard insurance policy covering the project, or evidence of property insurance, comprising property damage liability totaling at least eighty percent (80%) of the unpaid principal balance of the mortgage, naming the mortgagee and the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns as mortgagee and loss payee respectively. The hazard insurance must be in effect at least through 11:59 p.m. on the date on which the assignment of mortgage is recorded. In addition, if the mortgagee submits evidence of property insurance, the mortgagee must submit an affidavit that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] affirms under penalty of law that the [describe hazard insurance policy by name of insurance company or producer and policy number] described in the [Evidence of Property Insurance or other document name, as applicable] is in full force and effect and names the Secretary of Housing and Urban Development, of Washington, D.C., his/her successors and assigns, 451 Seventh Street, SW, Room 9230, Washington, D.C. 20410-0500 as loss payee as of [insert the date of assignment].

The effective date of this endorsement and mortgagee's affidavit, if applicable, should be the date the assignment of mortgage to the Secretary is filed for record. The evidence of property insurance is acceptable if it contains language to the effect that it is for informational purposes only and does not confer rights upon the holder of the policy only if accompanied by the mortgagee's affidavit. A Certificate of Insurance is not acceptable.

11. An assignment of the mortgagee's interest in the hazard insurance policy should state the following:

The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns. Date: _____

12. Additional Assignments. If the assignment of mortgage occurs within two (2) years after the date of final endorsement of the Note, the mortgagee must assign to the Secretary its rights under the Building Loan Agreement and all bonds or other agreements designed to assure completion. The balances of any undrawn letters of credit for escrow deposits held by the

mortgagee at the time of default will be treated as cash in the settlement of the mortgagee's claim for insurance benefits.

13. Additionally, for loans insured under Section 232 (12 U.S.C. 1715w) of the National Housing Act that were processed under LEAN, the mortgagee must assign all LEAN-related documents to the Secretary, including, but not limited to:

- a. The Master Lease and all corollary Subordination and Non-Disturbance Agreements;
- b. The Deposit Account Control Agreement. The mortgagee shall include a copy of any Notice of Exclusive Control that has been delivered to the Bank (as defined in the Deposit Account Control Agreement). If a Notice of Exclusive Control has not been delivered to the Bank, the Secured Party shall contact the Director of the Office of Healthcare Programs in HUD headquarters within the 45-day period (or any extended deadline) for further instructions; and
- c. The Intercreditor Agreement and all corollary Riders.

14. A copy of the resolution of the mortgagee's board of directors or other appropriate evidence demonstrating the authority of the signatory of the assignment instruments to act on behalf of the mortgagee.

15. Title insurance coverage. The regulations (24 CFR § 207.258(b)(4)(ii)) require that the effective date of the original loan title insurance policy coverage be extended to include the date the mortgage is assigned to the Secretary. Therefore, the mortgagee must submit (in addition to the original loan title insurance policy and previous endorsements) a date down endorsement to the original loan title insurance policy, or a new loan title insurance policy (see below) in the amount of the outstanding principal balance of the mortgage, which (1) bears an effective date on or after the date the assignment of mortgage is recorded, (2) names "The Secretary of Housing and Urban Development, of Washington, D.C., his/her successors and assigns" as the sole insured party, and (3) contains only those exceptions as may have been approved by the Secretary.

NOTE: Exceptions to title insurance including liens, covenants or easements which the Secretary has not approved previously and which have priority over the assigned mortgage may not appear as exceptions to the loan title insurance policy unless such exceptions are approved by the Secretary during the mortgage assignment process.

Any liens, covenants or easements which appear as exceptions to the loan title insurance policy and have not been approved previously must be listed as subordinate to the assigned mortgage. If this cannot be done, the acceptability of the exceptions will be evaluated on a case-by-case basis. The mortgagee should be aware that if the problem cannot be resolved within the deadline (including extensions) for submitting the complete legal package, interest on the claim will be curtailed or the mortgage may be reassigned to the mortgagee, thereby requiring the mortgagee to reimburse the Secretary the amounts paid plus interest.

If the mortgagee intends to submit a new loan title insurance policy, the policy must conform with the 2006 ALTA format, and the applicable boxes in Schedule A, item 6 must be checked. In those states in which the 2006 ALTA loan title insurance policy format has not been approved by the applicable state insurance board or commissioner for use in that jurisdiction, the loan title insurance policy submitted to HUD must conform with the 1992 ALTA or 1987 ALTA format (except in California, Texas, or Louisiana, where the applicable state-approved forms are used instead of the ALTA forms). If either the 1992 or the 1987 format is submitted, the loan title insurance policy must include an ALTA Form 8.1 Environmental Endorsement. The following loan title insurance policy formats are **not** acceptable:

1970 ALTA Loan Policy Modified/Revised 1984
1984 ALTA Loan Policy
1990 ALTA Loan Policy

If the loan was not finally endorsed for mortgage insurance prior to the mortgagee's election to assign, a pro-forma or specimen loan title insurance policy must be submitted for prior approval. The mortgagee must also enclose a copy of any existing loan title insurance policy. **NOTE:** Any pro-forma or specimen loan title insurance policy must be approved and the original loan title insurance policy must be received within the legal submission deadline (45 days or 60 days, if an extension has been granted as set forth hereinabove).

16. Information indicating when the current year's taxes will become delinquent. This may be in the form of a notation on the loan title insurance policy endorsement, tax bills stating the date of delinquency, or a letter from the taxing authority. Taxes that become delinquent within 45 days after the assignment of the mortgage to the Secretary has been filed for record may not appear as an exception on the loan title insurance policy. These taxes must be paid by the mortgagee and will be reimbursed by HUD pursuant to 24 CFR §§ 207.259(b)(1)(i) and 207.259(b)(1)(ii).

NOTE: HUD reserves the right in its sole discretion to refuse to accept any Indemnification Agreement, as described in the paragraphs above, if litigation has occurred which has affected or may affect the project or the mortgagee's interests. HUD's determination shall be made on a case-by-case basis.